

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3830 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAYANTKUMAR ATMARAM BHATT

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:

MR HK RATHOD for Petitioner

MR YS LAKHANI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/02/98

ORAL JUDGMENT

Rule. Mr.Lakhani waives service of Rule on behalf of respondents. The matter is taken up for final hearing as the point involved in this case is squarely covered by decision of the Hon'ble Supreme Court.

2. The petitioner, a Security Officer of the Gujarat State Road Transport Corporation, filed this Special

Civil Application and prayer has been made for quashing and setting aside the decision dated 3.7.96 of the respondent No.1, rejecting the application of the petitioner for withdrawal of his application dated 19.6.96 of voluntary retirement. The petitioner, vide his notice-application dated 25th April 1996, sought voluntary retirement from the services of Corporation with effect from 31st July 1996. The respondent-Corporation, vide its order dated 12.6.96, accepted the application of the petitioner for going on voluntary retirement with effect from 31st July 1996. The order dated 12th June 1996, as per the case of petitioner was not served upon him upto 24th June 1996. The petitioner submitted an application on 19th June 1996 to the respondent No.1 seeking therein withdrawal of his claim for voluntary retirement under his notice-application dated 25th April 1996. That application of the petitioner came to be rejected vide communication dated 6th July 1996. The order dated 12th June 1996 came to be modified by respondent under its order dated 30th August 1996, wherein it has been ordered that the order dated 12th June 1996 be considered to have been passed under S.R.51-A and not under S.R.51. The petitioner sent a notice dated 4.2.97 to the respondent but that notice was not replied. Hence this Special Civil Application.

3. The learned counsel for the petitioner contended that the order accepting the application of the petitioner to go on voluntary retirement though was passed on 12th June 1996, the same would have been effective from 31st July 1996, and as such, before the later date, the petitioner has all the right to withdraw his application for voluntary retirement. Once the petitioner has exercised his right to withdraw the application for voluntary retirement before the affected date of voluntary retirement, the respondent has to accept the same. In support of this contention, the learned counsel for the petitioner placed reliance on two decisions of the Hon'ble Supreme Court and one of this Court, details of which are as under:

1. AIR 1989 SC 1083 - Punjab National Bank
v. P.K.Mittal
2. AIR 1987 SC 2354 - Balram Gupta v. Union
of India & Anr.
3. 1997(2) GLH 379 - N.A.Vasava v. Chief
Refinery Coordinator, Indian Oil
Corporation Ltd. & Anr.

It has next been contended that the petitioner is entitled to get the encashment of earn leave which was in his credit with interest thereon at the rate of 18%. Though the petitioner has submitted an application for encashment of leave, the same has not been decided.

4. The learned counsel for the respondent, on the other hand, does not dispute the legal position that the petitioner has a right to withdraw his notice seeking voluntary retirement before the affecting date of voluntary retirement, but contended that the order dated 12th June 1996 has been modified vide order dated 30th August 1996 and the petitioner was ordered to be retired under S.R.51-A and as such, the authorities relied upon by the learned counsel for the petitioner are of little help to the petitioner. So far as the claim of petitioner for encashment of earned leave is concerned, the learned counsel for the respondent submitted that as per the entitlement of the petitioner, it has to be given and still if the petitioner considers that his full entitlement has not been given, it is open to the petitioner to approach the Corporation and the Corporation shall decide the same in accordance with law.

5. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

6. The Service Regulation No.51-A of the Corporation gives right to the officer/ employee of the Corporation of the category, as mentioned therein, to seek voluntary retirement subject to fulfilment of condition of qualifying services and after giving three months notice to the Corporation. If we go by the order dated 30th August 1996, it is clear that under the order dated 12th June 1996, a mistake has been committed which has been rectified. The Service Regulation No.51 of the Corporation provides for compulsory retirement of the officer/ employee but it is not the case of compulsory retirement of the petitioner, but a case where the petitioner has prayed for voluntary retirement from the services of the Corporation and rightly, under the order dated 30th August 1996, that mistake has been correct and it has been made clear that the petitioner is allowed to go on voluntary retirement as per the provisions of Service Regulation No.51-A. So the contention made by learned counsel for the respondent that the order dated 30th August 1996 has modified the earlier order dated 12th June 1996, is of no consequence.

7. It is not in dispute that the petitioner has

submitted application for withdrawal of his notice-application for voluntary retirement with effect from 31st July 1996 before 31.7.1996. It is true that the notice-application of the petitioner to go on voluntary retirement has been accepted by the Corporation vide its order dated 12th June 1996 and it is equally true that mentioning of Service Regulation No.51 is only an error, but this voluntary retirement would have been effective from 31st July 1996. The relationship of employer and employee, i.e. of the Corporation and the petitioner would have come to an end only from 31st July 1996 and till that date, this relationship subsists. Though the order accepting the application of the petitioner to go on voluntary retirement has been passed on 12th June 1996, it would have been effective only from 31st July 1996 and before this effective date, the petitioner has all the right to withdraw his application for voluntary retirement and if such a prayer has been made, then the respondent-Corporation could not have taken shelter of the order dated 12th June 1996. The matter is squarely covered by judgments of the Hon'ble Supreme Court and of this Court, on which reliance has been placed by learned counsel for the petitioner.

8. In the result, this Special Civil Application succeeds and the same is allowed and the order of the respondent Corporation dated 3rd July 1996, annexure 'H' to this Special Civil Application, is quashed and set aside, and it is hereby declared that the petitioner shall be deemed to be continued in service till 31st August 1997, on which date he had attained the age of superannuation as per his own case. The petitioner shall be entitled for all legal consequential benefits following from quashing of the said order. The respondent-Corporation is directed to give all consequential benefits legally available to the petitioner within a period of two month from the date of receipt of copy of this order. All his retirementary benefits may also be accordingly revised. So far as the claim of the petitioner regarding the encashment of earn leave is concerned, it is suffice to say that the petitioner has a right to move an application to the respondent-Corporation and if such an application is made then the same may be decided by the Corporation within a period of two months from the date of receipt thereof and where the claim of petitioner regarding encashment of earn leave is not acceptable, then a reasoned order may be passed and a copy of the same may be sent to the petitioner by registered post A.D. Rule made absolute in aforesaid terms with no order as to costs.

(sunil)